

**Globe Aviation Services and Service Employees International Union, Local 254, AFL-CIO.** Case 1-RC-21189

June 8, 2001

DECISION ON REVIEW AND ORDER  
BY CHAIRMAN HURTGEN AND MEMBERS  
LIEBMAN  
AND TRUESDALE

On April 28, 2000, the Petitioner filed a petition seeking to represent all cleaners employed by Globe Aviation Services (Globe) at Logan International Airport (Logan) in Boston, Massachusetts. Globe asserts that it is subject to the Railway Labor Act (RLA) because its employees perform traditional airline work, and because that work is controlled by air carriers. Therefore, Globe argues that the National Labor Relations Board (the Board) lacks jurisdiction under Section 2(2) of the National Labor Relations Act. After a hearing, the Regional Director issued a Decision and Order dismissing the petition finding that Globe is subject to the RLA and therefore within the jurisdiction of the National Mediation Board (NMB). The Petitioner requested review on the jurisdictional issue arguing that the carriers involved do not exercise such control over Globe's employees as to warrant a finding of NMB jurisdiction.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel and on September 22, 2000, granted review.

On the entire record in this case, the Regional Director found, and we agree that

Globe has contracts with four airline carriers to provide skycap, wheelchair, pre-board screening, and cleaning services at Logan. It employs approximately 15 non-supervisory cleaners whose duties are interchangeable. The cleaners spend between 60 to 75 percent of their time cleaning the terminals for the four airlines, viz., cleaning floors, furniture, ticket counter areas, gate areas, corridors, bathrooms, and airline offices. The remainder of their time is spent cleaning aircraft for two of the four airlines, Sun Country Airlines and East Coast/Tradewinds Airlines, viz., removing trash, wiping surfaces, vacuuming, cleaning and restocking toilets, and returning seats and seatbelts to their proper positions.

Globe's contracts with the airlines details the cleaning tasks and their frequency. The airlines require adherence to written specifications and manuals, give oral directions on cleaning procedures, and inspect the work done.<sup>1</sup>

<sup>1</sup> For example, Sun Country Airlines has provided the Employer with an aircraft cleaning manual that lists in detail the tasks to be performed in cleaning its aircraft. The Employer's contract with Northwest Airlines specifies the schedule for various cleaning tasks through-

Globe is required to provide a list of current employees to the airlines and to update it monthly. The airlines require employees to complete a background check and/or alcohol and drug testing if required by the Federal Aviation Administration (FAA) or airline policy. The airlines require Globe's employees to wear a Globe uniform and identification badge. The contracts with the airlines provide that Globe will immediately remove from service any employee who, in the opinion of the airlines, does not meet its qualifications for any reason. Globe has removed employees from service at the request of the airlines. Under the contracts, Globe must provide training to its employees before assigning them to work.

Section 2(2) of the National Labor Relations Act provides that the term "employer" shall not include "any person subject to the Railway Labor Act." 29 U.S.C. §152(2). Similarly, Section 2(3) of the Act provides that the term "employee" does not include "any individual employed by an employer subject to the Railway Labor Act." 29 U.S.C. §153(3). The RLA, as amended, applies to rail carriers and to:

[e]very common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner or rendition of his service.

45 U.S.C. Section 151 First and 181. The RLA was extended to carriers by air by amendments enacted in 1936.

On September 22, 2000, the Board requested that the NMB study the record in this case and determine the applicability of the RLA to Globe. The NMB subsequently issued an opinion indicating that the cleaning work in question here is work traditionally done by carriers and that the carriers exercise "substantial control over Globe and its employees." In its view, Globe is a carrier subject to the RLA. *Globe Aviation Services*, 28 NMB 41 (2000).<sup>2</sup>

out the terminal; Northwest Airlines has also provided the Employer with a list of tasks to be performed by its cleaners in cleaning the jet bridges, i.e., the walkways between the terminals and aircraft, including the frequency with which each task must be performed. The airlines also give oral directions as to how cleaning work is to be done. The airlines check the cleanliness of their aircraft for quality assurance purposes, using these documents as a guide.

<sup>2</sup> The NMB uses a two-pronged jurisdictional analysis where the company is a separate corporate entity and does not fly aircraft for the public transportation of freight or passengers. Under the first prong of the test, known as the "ownership or control" prong and derived from the language of the Railway Labor Act, the NMB determines whether a common carrier exercises direct or indirect ownership or control of the

Having considered the facts set forth here in light of the opinion issued by the NMB, we find that Globe is engaged in interstate common carriage so as to bring it within the jurisdiction of the NMB pursuant to Section 201 of Title II of the RLA.<sup>3</sup> Accordingly, we shall affirm the Regional Director's decision to dismiss the petition.<sup>4</sup>

#### ORDER

It is ordered that the decision of the Regional Director dismissing the petition in Case 1-RC-21189 is affirmed.

MEMBER LIEBMAN, concurring.

For the reasons set forth below, I join my colleagues in deferring to the opinion of the National Mediation Board (NMB) that Employer Globe and its employees are subject to the Railway Labor Act (RLA).

#### *a. Whether cleaning airline terminals is work that is traditionally performed by employees in the airline industry*

The employees spend between 60 to 75 percent of their time cleaning airline terminals, and the rest of their time cleaning aircraft. In the underlying proceeding before the Regional Director, the Petitioner argued (1) that cleaning airline terminals (as opposed to cleaning aircraft) is not work traditionally performed by employees in the airline industry, and (2) that the work of cleaning airline terminals is within the jurisdiction of the National Labor Relations Board (Board) pursuant to the National Labor Relations Act (Act) rather than the jurisdiction of the NMB pursuant to the RLA. In the Regional Director's Decision and Order dismissing the petition, she accurately found, citing the NMB's opinion in *Sky Valet*, 23 NMB 155, 160 (1996), that the NMB has held that the work of cleaning airline terminals, as well as the work of

entity. Thus, 45 U.S.C. Sec. 151 First and 181 states that "the term 'carrier' includes . . . any company which is directly or indirectly owned or controlled by or under common control with any carrier." *Delpro Co. v. Railway Carmen*, 519 F.Supp. 842, 848 and fn. 14 (D. Del. 1981), aff'd. 676 F.2d 960 (3d Cir. 1982), cert. denied 459 U.S. 989 (1982). See also *Ground Services*, 7 NMB 509, 509-510 (1980). The second prong of the test, known as the "function" prong, is also derived from 45 U.S.C. Sec. 151 First. For the NMB's jurisdiction to attach to the noncarrier under the carrier's control, the RLA states that the entity must be one "which operates any equipment or facilities or performs any service . . . in connection with the transportation, receipt, delivery . . . transfer in transit . . . and handling of property transported." *Delpro Co.*, supra, 676 F.2d at 964. In this part of the test, the NMB determines whether the work is traditionally performed by employees of air or rail carriers. The NMB requires that both prongs of the test be met in order for it to assert jurisdiction under the RLA. *United Parcel Service*, 318 NLRB 778, 779-780 fn. 7 (1995), enfd. 92 F.3d 1221 (D.C. Cir. 1996). In its opinion, the NMB concluded that both prongs of the test had been met.

<sup>3</sup> See *Sky Valet*, 319 NLRB 1243 (1995).

<sup>4</sup> The Petitioner filed a statement in opposition to NMB jurisdiction urging that the Board reject the NMB opinion and extend NLRB jurisdiction. For the reasons set forth in the opinion, we decline to do so.

cleaning aircraft, is work traditionally performed by employees in the airline industry.<sup>1</sup> Although the Petitioner requested Board review of the Regional Director's decision on other grounds, it did not challenge her statement of NMB law, nor did it independently renew before the Board its argument that cleaning airline terminals is not work traditionally performed by airline employees. Indeed, the Petitioner appears to have at least implicitly accepted that proposition in its request for review of the Regional Director's decision.<sup>2</sup>

Nonetheless, I question the soundness of the NMB's finding that cleaning airline terminals is work traditionally performed by employees in the airline industry, and I am not aware of any Board cases that so find. Indeed, Board precedent at least implicitly supports the proposition that the work of cleaning airline terminals is within the jurisdiction of the Board.<sup>3</sup> However, I believe that Petitioner has effectively conceded that proposition in this case.

#### *b. Whether the air carriers exercise substantial control over the work performed by Globe's employees*

I find that the facts, as set forth by my colleagues, present a close question on the control issue. Nevertheless, I am satisfied in the final analysis that the preponderance of the evidence establishes that the carriers exercise a sufficient level of control over Globe's operations to justify our deferral to the NMB's opinion, and I agree with my colleagues' finding to that effect.

<sup>1</sup> The NMB's exact language in *Sky Valet* is "Cleaning aircraft and airline terminals is work traditionally performed by employees in the airline industry." 23 NMB at 160.

<sup>2</sup> The Petitioner principally argued that the Regional Director erred in finding that the airlines in this case exert sufficient control over Globe to satisfy the control prong of the NMB's two-pronged analysis for determining if it has jurisdiction over an employer. See majority opinion, fn. 2. Thus, the Petitioner argued in its request for review that:

*Although certain types of cleaning work has [sic] been held to be work traditionally performed by employees in the airlines industries[,] the [R]egional [D]irector has gone too far in her attempts to transform the contract right of an airline to have a cleaner removed and the contract right to police contract performance into actual supervision and control of work activities. [Emphasis added.]*

<sup>3</sup> See, e.g., *AMI, Inc.*, 319 NLRB 536 (1995) (unlawful refusal to hire, and unlawful refusal to bargain about, employees who clean airline terminals); *Ebon Services*, 298 NLRB 219 (1990), enfd. 944 F.2d 897 (3d Cir. 1991) (unlawful refusal to execute agreed-on collective-bargaining agreement covering employees who clean airline terminals); *Servair, Inc. & Servair Maintenance, Inc.*, 252 NLRB 670 (1980) (unlawful treatment of, and unlawful recognition of union purporting to represent, employees who clean airline terminals); *Cameron Co.*, 193 NLRB 430 (1971), enfd. 462 F.2d 575 (5th Cir. 1972) (unlawful discharge of employee who cleans airline terminals).

*c. Conclusion*

Under these circumstances, and in light of the considerations set forth above, I join my colleagues in deferring

to the NMB's opinion and in affirming the Regional Director's dismissal of the instant representation petition.